

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Telecommunications Service)
Inside Wiring)

CS Docket No. 95-184

Customer Premises Equipment)

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COMMENTS

These comments are submitted in response to the request of the Federal Communications Commission ("Commission") for public input and guidance in the above-referenced Notice of Proposed Rulemaking ("NPRM"). As a telecommunications and real estate professional, the following comments are submitted in order to assist the Commission in developing a realistic framework for the application of telecommunications policy in the unique environment of commercial and residential multi-unit buildings.

As telecommunications technologies converge and the business lines among previously segmented service providers increasingly blurs, the need for the Commission to promulgate rules that embody a consistency of structure and application becomes essential. The convergence process is evolving rapidly and regulations need to evolve intelligently, rather than simply expand in a patch work quilt to cover new competitors who enter the marketplace.

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In paragraph 64 of the NPRM, the Commission questions whether it should attempt to create access parity among service providers. The language of the NPRM at paragraph 61 indicates that the Commission may be predisposed to promulgating forced access regulations predicated on the mounting complaints of alternative access providers.

Legislation Designed To Minimize Regulatory Burdens

Recently Congress passed the Telecommunications Reform Act of 1996 (“Telcom Reform Act”) which was designed to promote competition and reduce regulation in order to secure lower prices and higher quality services for telecommunication consumers, while encouraging the rapid deployment of new telecommunication technologies. One of the primary purposes of this legislation was to minimize the regulatory hurdles telcom service providers must overcome in order to bring competitive services to the public. Now it appears that the Commission is contemplating shifting existing anachronistic and cumbersome regulatory framework to encompass the real estate industry, thereby creating the potential for 50 individual states to interpret federal forced access language. It is bound to generate a plethora of private litigation regarding statutory interpretation, and constitutionally protected private property rights. This is hardly a scenario for maximizing the deployment of telecommunications technologies, but rather will create the opposite effect.

Consumer Benefits Are Maximized When Free Market Prevails

Forced access strangles the free market forces which traditionally have made our economy operate at it’s optimum level. To assume that the government must intervene

in the traditional tenant/property owner relationship is to imply that free market forces are not functioning at the consumer/supplier level. There is no evidence that supports this implication. In fact, the opposite is true. Real estate is a highly competitive industry. It is the one business that can not be relocated. Without tenants, the real estate entrepreneur is out of business. Free market forces demand that the real estate industry supply its tenants with the services they demand or the customer base will evaporate.

Proper Management Of Building Infra-structure

Property owners must be accorded the right to control their buildings' infra-structure. Forced access will eliminate the real estate industry's ability to do what it does best: manage its assets by responding to the needs of tenants. Encroachment of property owners' flexibility to meet the demands of tenants will inevitably lead to the overall deterioration of tenant services.

In New York there are dozens of companies approved by the state Public Utilities Commission ("PUC") to offer telcom services. If these competitive access providers ("CAP") all demand access to the same building, how can that property owner be expected to accommodate all their demands for access? Infra-structure (conduit and riser space, utility closets, and equipment rooms) is a finite resource. Infra-structure can not expand on command to meet every CAP's demand to solicit tenant subscriber fees. The most efficient and effective structure for accessing access demands is in fact the property owners. The property owners know their buildings, they know their tenants and they know their marketplace.

Statutory Precedent Established By Congress

Clearly, forced access regulations were not contemplated by Congress in the Telcom Reform Act. If they were, the forced access language that was previously included in the 1994 Senate bill S. 1822 would have survived in HR.1555 or S. 652. However, neither of these bills contained forced access language because sufficient evidence to adopt such restrictive regulatory measures was not presented to Congress. In examining the right of various service providers to obtain access to private property the Commission should not implement a policy of forced access which Congress clearly rejected.

The issue of deployment of telecommunications services in multi-unit residential and commercial buildings certainly requires careful consideration as it impacts that large segment of the American public who live and work in urban centers. Upon consideration of the public policy, as well as the legal and practical aspects of forced access, the Commission should find that permitting property owners to retain the responsibility of determining the methodology for telecommunications service providers to access their properties will best serve the public interest.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Michael Printz", written in a cursive style.

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March 14, 1996